

United States District Court
Middle District Tennessee

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SEP 09 2016

U.S. DISTRICT COURT
MID. DIST. TENN.

) Craig Cunningham
) Plaintiff, Pro-se
)

) v.
)

CIVIL ACTION NO.

) Steven Pratt, Pelvic Thrust Media, LLC, Anvil Advertising, Inc., Branded
Research, Inc., Matt Gaffney, Jeff Ackerman, The SV Trust, Praza, LLC,
Bumrush media, LLC, PDL Protect, LLC, Rusty Robot Media, LLC, Bad Loan
Relief, LLC, Michelle Dobler,
) John/Jane Doe 1-10
) Defendants.

Plaintiff's Original Complaint

1. The Plaintiff in this case is Craig Cunningham, a natural person and was resident of Davidson County at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, ste 248, Nashville, TN 37211
2. Pelvic Thrust Media, LLC is a Florida corporation operating from 1451 W. Cypress Creek Road, ste 212, Fort Lauderdale, FL 33309 and can be served via corporate officer and registered agent Steven Pratt at 1743 S. State Road 7, # 204, North Lauderdale FL, 33068 or 1451 W. Cypress Creek Road ste 212, Fort Lauderdale 33309
3. Anvil Advertising, Inc., is a defunct Florida corporation that can be served via registered agent and corporate officer Steven Pratt at 1743 S. State Road 7 # 204, North Lauderdale, FL 33068 or 1451 W. Cypress Creek Road, ste 212, Fort Lauderdale, FL 33309.

4. PDL Protect, LLC is a Florida corporation that can be served via registered agent and corporate officer Steven Pratt at 6499 Powerline Road # 205, Fort Lauderdale, FL 33309.
5. Rusty Robot Media, LLC is a Florida corporation that can be served via registered agent and corporate officers Steven Pratt and Michelle Dobler at 6499 NW 9th Ave., ste 205, Fort Lauderdale, FL 33309.
6. Michelle Dobler is a corporate officer of Rusty Robot Media, LLC and can be served at 6499 NW 9th Ave., ste 205, Fort Lauderdale, FL 33309.
7. Bad Loan Relief, LLC is a Florida corporation that can be served via registered agent Steven Pratt, 1451 W. Cypress Creek Road # 212, Fort Lauderdale, FL 33309 or corporate officer Michelle Dobler, 1451 W. Cypress Creek Road, Fort Lauderdale, FL 33309.
8. BumRush Media, LLC is a Florida corporation that can be served via registered agent Steven Pratt, 1451 W. Cypress Creek Road # 212, Fort Lauderdale, FL 33309 or Corporate officer Michelle Dobler 1451 W. Cypress Creek Road Ste 212, Fort Lauderdale, FL 33309.
9. Steven Pratt is a corporate officer for Pelvic Thrust Media, LLC and can be served at 17454 S. State Road 7 # 204, North Lauderdale, FL 33068 or 1451 W. Cypress Creek Road, ste 212, Fort Lauderdale, FL 33309.
10. Branded Research, Inc., is a Delaware corporation with a registered agent of The Corporation Trust Company, Corporation Trust Center 1209 Orange St., Wilmington, DE 19801.

11. Matt Gaffney and Jeff Ackerman are natural persons who can be served at 2146 Kettner Blvd., San Diego, CA 92101.
12. Praza, LLC is an Arizona corporation operating from 14747 N. Northsight Blvd., ste 111-400, Scottsdale, AZ 85260 and can be served via registered agent Registered Agents, Inc., 1846 E. Innovation Park Dr., ste 100, Oro Valley, AZ 85755.
13. The SV Trust is the manager of Praza, LLC and can be served at 14747 N. Northsight Blvd., ste 111-400, Scottsdale, AZ 85260.
14. John/Jane Does 1-10 are currently unknown persons or entities that are also liable for the calls in question.

Jurisdiction

15. Jurisdiction of this court arises as the acts happened in this county
16. Venue in this District is proper in that the defendants transact business here, and the acts and transactions occurred here.
17. The Defendants regularly had calls placed for their benefit or on their behalf to Tennessee residents for the purpose of soliciting residents to buy their promotional products and services, and these products and services were regularly shipped to Tennessee residents.

FACTUAL ALLEGATIONS

18. In 2016, the Plaintiff received multiple unsolicited and unwanted text messages prompting the Plaintiff to go to odd websites for a beauty kit. Unsolicited text messages have been deemed phone calls under the TCPA. These were touted as “free samples” where the Plaintiff would only pay the shipping and handling fees. This is typical of “negative option marketing” where a consumer must opt out of future charges or they will be charged for a program. These programs have frequently drawn scrutiny from the FTC and multiple class action lawsuits for deceptive marketing practices.

19. All of the text messages were placed to the Plaintiff’s cell phones 615-331-7262. All of the text messages redirected the Plaintiff to a website antiagingrewards.com. At antiagingrewards.com, there were a total of 4 products being offered for sale, which were **Chamomile calm** sold by Praza, LLC, **Nu Beauty**, **Ageless Illusion**, and **Metabo Matrix**. The Plaintiff is in the process of identifying the companies that manufacture each of these products and should be able to identify them through the discovery process.

20. The website antiagingrewards.com is owned by Steven Pratt and Anvil Advertising Inc., or Pelvic Thrust Media, LLC both of which are entities owned and controlled by Steven Pratt. The other entities owned or controlled by Steven Pratt to hide money and as alter ego’s of the original corporations that engaged in the illegal behavior. Steven Pratt is using these other corporation to hold and launder money generated through

these illegal text messaging schemes or are used by Steven Pratt in these illegal marketing schemes.

21. The process works as follows: The Plaintiff would be sent an illegal text message to his cell phone by an entity owned/controlled by Steven Pratt or entities he controls. The text message would list a website owned and controlled by Steven Pratt that redirects to antiagingrewards.com, which is also owned and controlled by Steven Pratt or entities he controls. On the [antiagingrewards](http://antiagingrewards.com) website, there would be 4 products sold for which Steven Pratt generates a commission for himself, and the companies selling the products hope to trick unwitting consumers into buying and rebilling at inflated prices later.

22. Steven Pratt or entities he controls signed contractual agreements with each of these 4 companies selling these beauty products to generate leads and sell their products through his efforts for which he would be rewarded with commissions for each sale.

Details on the text messages sent to the Plaintiff

23. On August 24th, 2016, the Plaintiff received a text from 832-637-3574.

The text message said *"Greg, just come to <http://fj49j.pw> and claim your no-risk products from Kim and Kourtney K!"* which is apparently a direct and false reference to Kim and Kourtney Kardashian that actually don't endorse or refer to these products.

24. Another text message on 8/23/2016 from 828-295-2610 stated *"Greg, you may get your 3 no-risk products. Click on <http://9f4dem.us>"*

25. Another text came in on 8/22/2016 from 336-536-0211 with a nearly identical message to the one in paragraph 11 of the complaint but directed the Plaintiff to go to <http://fj49j.site> instead.
26. Another text came in on August 20th 2016 from 501-239-5640 with an message of *"Greg, simply click <http://jg-48f.xyz> and redeem up to 6 risk free products from Kim and Kourtney K."*
27. On August 19th 2016, the Plaintiff recieved a message from 337-313-2642 which stated *"Greg, just click <http://dlk49.pw> to redeem up to 5 risk-free products by kim and Kourtney!"*
28. On August 14th, 2016 the Plaintiff recieved a text mesage from 501-242-0163 nearly identical to the message in paragraph 11 which stated instead that the Plaintiff should visit *"<http://f94-fk.us>"*
29. On August 13, 2016, the Plaintiff recieved a text from 915-267-1150 stating *"Greg, come and claim up to 5 no-risk products. Visit <http://dkfg4-k.us>"*
30. On August 12, 2016, the Plaintiff recieved a text from 772-242-4719 which stated *"Greg, come and claim up to 3 no-risk beauty kits. Come to <http://dlk49.pw> to get full details."*
31. On August 11, 2016, the Plaintiff recieved a text from 281-783-6141 which stated *"Greg, just click to <http://f49-fk.us> and claim up to 6 no-risk products from Kim K and Kourtney!"*

32. On August 10, 2016, the Plaintiff recieved a text from 920-605-9223 whcih stated *"Greg, please click <http://sm-2w.site> and redeem your no-risk beauty kits by Kim and Khloe!"*
33. On August 9th, 2016 the Plaintiff recieved a text from 803-393-3417 that stated *"Greg, you can claim your 6 no risk beauty boxes. Visit <http://jg-48f-pw> to find info."*
34. On August 8th, 2016 the Plaintiff received a text from 720-500-6870 that stated *"Greg, just click to <http://f94-fk.us> and claim up to 3 risk-free beauty kits from Kim K and Khloe!"*
35. On August 4th, 2016 the Plaintiff recieved a text from 724-821-5175 that stated *"Greg, just click <http://argue.host> and claim your risk-free beauty kits by Kim K and Kourtney"* and another text from 503-436-6638 that stated *"Greg you can claim up to 2 risk-free products. Visit <http://k94-d.bid> to see info"*
36. On August 3rd, 2016 the Plaintiff recieved a text message from 870-66-5359 that stated *"Greg, come and claim your 4 no-risk beauty kits. Come to <http://among.tech> to get details"*
37. On April 29, 2016 the Plaintiff recieved a text message from 740-207-2502 that stated *"PRE-RELEASE! You can try Kim and Kourtney's new skincare line risk-free today! Visit the pre-release portal at <http://cpo1.net> to get started!"*
38. On April 5th and 19th 2016 the Plaintiff recieved text messages from a short code of 24413 which the Plaintiff is in the process of researching, but the

text messages stated *"You were selected as a skincare product tester. To get started today please visit <http://goo.gl/PQbk4p> to claim your products and reserve your spot."* and *"You were selected to try our new derma cream line free in your home. Visit <http://goo.gl/or2xy> to get started."*

39. In total, the Plaintiff received 19 text messages that were unsolicited and unwanted to his cell phone.

40. As these above named parties stand to profit and benefit from the Plaintiff's enrollment in these programs, they are vicariously liable for the calls as a seller, as defined by the TCPA. Steven Pratt and his entities are directly liable for the calls that were placed, and the entities and managers for the products sold are jointly, severally, and vicariously liable for the damages in question.

41. The individual corporate officers and managers of each of the corporate entities are liable for the calls placed on behalf or for their benefit. They are personally liable for the TCPA damages as they had direct, personal participation in causing the illegal telephone calls to be made as well as they directly authorized the illegal telemarketing calls to be made.

42. The individual corporate officers also failed to take efforts to implement appropriate policies or procedures designed to comply with the TCPA which makes them personally liable for the telephone calls made on their behalf and for their benefit.

43. These text messages violated the TCPA in two ways, first by placing multiple automated telephone calls to the Plaintiff's cell phone in violation

of 47 USC 227(b), and second by not conforming to the requirements of 47 USC 227(c)(5) and the FCC's rulemaking authority under 47 CFR 64.1200(d), which requires the defendants to have a written policy for maintaining a do-not-call list, failure to train agents and personnel engaged in telemarketing on the use of the do-not-call list, and the failure to identify the party placing the call or the entity for which the call is being placed. Each of the Defendants are jointly liable to the Plaintiff in the amount of \$3,000 per call made, \$1500 for violating 47 USC 227(b) and \$1500 for violating 47 USC 227(c)(5). Additionally, each product offered by each company represents a new cause of action entitling the Plaintiff to \$3,000 per call per defendant.

44. The officers of the corporations have a direct role in the illegal conduct, authorizing it and ratifying the illegal telephone calls.

45. The officers of each and every listed corporation had direct, personal conduct in authorizing the telephone calls or oversaw and directed the telemarketing efforts for which their corporations benefitted. The officers set company policy and directed the marketing efforts of the respective companies.

Vicarious Liability

46. In making these calls, the calling entity operated by Steven Pratt was essentially marketing the products offered by each and every manufacturer of the beauty creams and pills sold and others through an

agency relationship with Praza, LLC and the other manufacturers of the products sold. through an agency relationship with Global Media.

47. The 6th circuit as well as multiple other courts have ruled that there is direct liability to include for corporate actors such as executives like and vicarious liability for corporations that ultimately benefit or sell services/products illegally marketed by 3rd parties. The parties are also jointly and severally liable for the phone calls as well.
48. Similarly, the calls were placed with apparent authority, actual authority, and the ratification of each product manufacturer and the respective executives/officers of the corporation. These companies knew of the illegal conduct by the entities placing the calls to include quality resources and refused to exercise control or authority over defendants to reduce or eliminate the improper sales methods.

Actual Damages

49. The Plaintiff has suffered actual damages in the form of the enrollment fees charged. For example, Nubeauty charged the Plaintiff \$6.95.
50. Additionally, the Plaintiff has suffered annoyance, frustration, anger, loss of cell phone use, reduced battery life of his cell phone due to the calls.

CAUSES OF ACTION:

COUNT I

Violations of the Telephone Consumer Protection Act (TCPA)

51. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

52. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by using an autoated telephone dialing system to place calls to the Plaintiff's cell phone in violation of 47 USC 227(b). This entitles the Plaintiff to recover \$1500 per call.

CAUSES OF ACTION:

COUNT II

Violations of the Telephone Consumer Protection Act (TCPA)

53. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

54. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by 47 USC 227(c)(5) by way of 47 CFR 64.1200(d) and failed to comply with the requirements to maintain and train employees on the use of a do-not-call list.

PRAYER FOR DAMAGES AND RELIEFS

A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against each and every defendant for the following:

B. Statutory damages of \$3000 for each phone call for each defendant mentioned in the call

- C. Actual damages of the enrollment fees and additionally as the court may find warranted at trial.
- D. Pre-judgment interest from the date of the phone calls
- E. Attorney's fees for bringing this action; and
- F. Costs of bringing this action; and
- G. For such other and further relief as the Court may deem just and proper

I, Craig Cunningham, Affiant, hereby attest to and certify that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief and that a true and correct copy of the foregoing was sent to the defendants in this case.

Respectfully submitted September 6th, 2016


Craig Cunningham Plaintiff, Pro-se, 615-348-1977

5543 Edmondson Pike, ste 248, Nashville, TN 37211

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Craig Cunningham

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Steven Pratt

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 USC 227

Brief description of cause:
Telemarketing

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
100,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE




DOCKET NUMBER

DATE
09/06/2016

SIGNATURE OF ATTORNEY OF RECORD

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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